

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YAYA JALLOW,	:	
	:	20 Civ. 6260 (LGS)
Plaintiff,	:	
	:	
-against-	:	<u>ORDER</u>
	:	
CITY OF NEW YORK,	:	
	:	
Defendant.	:	
-----X	:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, Plaintiff, proceeding pro se, filed a second motion to amend his First Amended Complaint (“FAC”), stating that he: (1) wishes to provide submissions to address jurisdictional issues at a later date and (2) wishes to amend the set of exhibits attached to his FAC at a later date (Dkt. No. 17). As Plaintiff has not provided any detail as to what new claims, alleged facts or amended exhibits would be included in any Second Amended Complaint (“SAC”), the Court cannot evaluate whether amendment is justified under Federal Rule of Civil Procedure 15, which allows amendment “when justice so requires.”

WHEREAS, Plaintiff filed a motion for summary judgment on his claims that he was unlawfully detained by Defendant at hospitals for two mental evaluations in violation of 42 U.S.C. § 1983 (Dkt. No. 18). A motion for summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The material facts in this case will come from discovery -- the process by which the parties exchange factual information regarding Plaintiff’s claims and Defendant’s defenses to those claims. Because this case is at an early stage -- Defendant has not been summoned and has not yet entered an appearance -- no discovery has occurred, and it is not possible for the Court to ascertain whether Defendant disputes any of the facts alleged in Plaintiff’s summary judgment motion. Similarly, it is not possible for the Court to ascertain what

defenses Defendant may raise against the allegations set forth in Plaintiff's FAC. As such, a summary judgment decision is not appropriate at this juncture. Accordingly, it is hereby

**ORDERED** that Plaintiff's second motion to amend the FAC (Dkt. No. 17) is **denied**. If Plaintiff wishes to: (1) add new claims to the FAC; (2) allege new facts in the FAC; or (3) modify any supporting exhibits to the FAC, by **January 20, 2021**, he shall submit to the Southern District of New York's pro se intake unit<sup>1</sup> a proposed Second Amended Complaint ("SAC") containing his proposed amendments, as well as any supporting exhibits. Along with his proposed SAC, Plaintiff shall provide a letter no longer than three pages explaining why he did not put the new claims, alleged facts or amended exhibits in the original Complaint (Dkt. No. 1), the FAC (Dkt. No. 9) or the first motion to amend the FAC (Dkt. No. 14). Because Plaintiff's proposed SAC, if approved, would completely replace, not supplement, the FAC, any alleged facts or claims that Plaintiff wishes to maintain must be included in the proposed SAC. It is further

**ORDERED** that Plaintiff's motion for summary judgment (Dkt. No. 18) is **denied** without prejudice to renewal at a later date, after Defendant has appeared in this case and the parties have completed the discovery process. It is further


**ORDERED** that to allow Plaintiff to effect service on Defendant, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 Form") for Defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon Defendant.

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<sup>1</sup> Instructions for contacting the pro se intake unit are available at:  
<https://www.nysd.uscourts.gov/prose/role-of-the-prose-intake-unit/contact>.

The Clerk of Court is respectfully directed to mail a copy of this Order, together with an information package outlining pro se procedures in the Southern District of New York, to pro se Plaintiff.

Dated: December 8, 2020  
New York, New York



**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**